



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
U.S. COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231  
www.uspto.gov

APPLICATION NO	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO
09 423,575	01 27 2000	SJEF SMEEKENS	ARNO114646	6916

2590 04 14 2003

CHRISTENSEN O'CONNOR  
JOHNSON & KINDNESS  
2800 PACIFIC FIRST CENTRE  
1420 FIFTH AVENUE  
SEATTLE, WA 98101-2347

EXAMINER

CHUNDURU, SURYAPRABHA

ART UNIT

PAPER NUMBER

1637

DATE MAILED: 04 14 2003

Please find below and/or attached an Office communication concerning this application or proceeding.

S.M.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/423,575	SMEEKENS ET AL.
	Examiner Suryapraba Chunduru	Art Unit 1637

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133)
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b)

#### Status

- 1) Responsive to communication(s) filed on 07 February 2003.
- 2a) This action is **FINAL**.                  2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) 5-17 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-4 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s) _____   |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION**

1. Applicants' response to the office action (Paper No. 14) filed on February 7, 2003 has been entered and considered.

**Response to Arguments**

2. Applicants' response and arguments (Paper No. 15) have been fully considered and found not persuasive.

3. The following is the rejection made in the previous office action under 35 USC 112 second paragraph:

Claims 1-4 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 is indefinite and unclear for reciting 'ATH1 gene product' because it is not clear what the ATH1 refers to (i.e. does it refer to any gene product within the Arabidopsis thaliana homeobox region). For art purposes ATH1 is broadly read and the gene products within that region are considered for the following rejections.

***Response to arguments:***

Applicants' arguments and amendment (Paper No. 15) with respect to the rejection under 35 U.S.C. 112, second paragraph, has been considered and found not persuasive because applicants argue that ATH1 is fully disclosed in the instant specification and the sequence of ATH1 cDNA is provided in the Fig. 1 of the instant specification. The argument is fully considered however the specification cannot be read into the claims. The metes and bounds of the claims are unclear and indefinite since the claims do not recite clearly the structural limitation of the ATH1 gene product hence the rejection is maintained.

Art Unit: 1637

4. The following is the rejection made in the previous office action under 35 USC 102(e):

Claims 1-4 are rejected under 35 U.S.C. 102(e) as being anticipated by Meyerowitz et al. (USPN. 5,744,693).

Meyerowitz et al. teach a method for modifying flowering in plants wherein, Meyerowitz et al. teach that the method comprises transforming a plant with a construct comprising a sequence coding for a transcriptional factor of *Arabidopsis thaliana*, (agamous gene, equivalent to ATH1 gene product) under the control of a promoter functional in plants, wherein the gene modifies flowering in plants (see column 2, lines 17-32, column 7, lines 18-35). Meyerowitz et al. also teach that the method comprises construct with sense and antisense agamous gene product (see column 2, lines 17-25); the transformed plant produce recombinant agamous protein (see column 6, lines 63-67, column 7, lines 1-2); construct comprising antisense sequence in transformed plants inhibits the said protein. Thus the disclosure of Meyerowitz et al. meets the limitations in the instant claims.

***Response to arguments:***

Applicant's arguments (Paper No.15) with respect to the rejection made in the previous office action under 35 U.S.C. 102(e) to 1-4 has been considered and found not persuasive. Applicants argue that the ATH1 gene product disclosed in the prior art of the record (Meyerowitz et al.) and the instant ATH1 gene product are different and have substantially different sequences and different DNA binding domains. The arguments are fully considered however, the structural limitations (ATH1 gene sequence) upon which the applicants relay is not in the claims. Therefore the rejection is maintained herein.

***Conclusion***

No claims are allowable.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Suryaprabha Chunduru whose telephone number is 703-305-1004. The examiner can normally be reached on 8.30A.M. - 4.30P.M. Mon - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Benzion can be reached on 703-308-1119. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3014 for regular communications and - for After Final communications.

Art Unit: 1637

Any inquiry of a general nature or relating to the status of this application or proceeding  
should be directed to the receptionist whose telephone number is 703-308-0196.

Suryaprabha Chunduru  
April 10, 2003

  
**JEFFREY FREDMAN**  
**PRIMARY EXAMINER**